

***United States Court of Appeals
for the Second Circuit***



APPENDIX

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-second day of May one thousand nine hundred and seventy-five.

Present:

HON. WILLIAM H. MULLIGAN

HON. WILLIAM H. TIMBERS

HON. MURRAY I. GURFEIN

Circuit Judges,

United States of America ex rel. Julius Fuller,

Petitioner-Appellant

v.

Honorable Robert J. Henderson, Superintendent, Auburn Correctional Facility, 135 State Street, Auburn, New York 13021

Respondent-Appellee.

75-2006

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed with costs to be taxed against the appellant.

A. DANIEL FUSARO,
Clerk

By VINCENT A. CARLIN,
Chief Deputy Clerk

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Appen-
dix

THE STATUTES INVOLVED

Title 28 United States Code §2254.

" . . . (b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available state corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

"(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented."

Federal Rules of Appellate Procedure, Rule 40.

"(a) Time for Filing; Content ... A Petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present."

Article 70 New York Civil Practice Law and Rules

"§7002 Petition

"(a) By whom made. A person illegally imprisoned or otherwise restrained in his liberty within the state, ... may petition without notice for a writ of habeas corpus to inquire into the cause of such detention and for deliverance...."

"§7003 When the writ shall be issued

"(a) Generally. ... If it appears from the petition or the documents annexed thereto that the person is not illegally detained ... the petition shall be denied."

"§7010 Determination of Proceeding

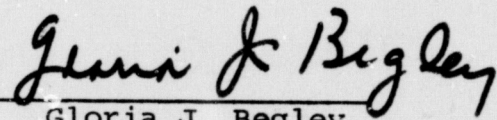
"(a) Discharge. If the person is illegally

AFFIDAVIT OF SERVICE BY MAIL

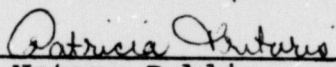
STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

Gloria J. Begley, being duly sworn , deposes and says that she is not a party to the action, is over 18 years of age and resides at 176 Seeley Street, Brooklyn, N.Y. 11218

On May 5, 1975, deponent served a copy of the within Appellant's Brief in Support of Petition for a Rehearing and Appendix upon Louis J. Lefkowitz, Attorney General, State of New York, by David Birch, Assistant Attorney General, attorney for Respondent in this action, at Department of Law, 2 World Trade Center, New York, N.Y. 10047, the address designated by said attorney for that purpose, by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


Gloria J. Begley

Sworn to before me this
5th day of June 1975.


Notary Public
PATRICIA TRITARIS
Notary Public, State of New York
No. 30-7288785
Qualified in Nassau County
Commission Expires March 30, 1978

